

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

## **RULE 26(F) REPORT OF PARTIES' DISCOVERY PLAN**

The parties respectfully submit this Report of Parties' Discovery Plan pursuant to Rule 26(f) of the Federal Rules of Civil Procedure (the "Federal Rules") made applicable herein by Rule 7026 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Court's June 22, 2020 Order. The parties conducted a Rule 26(f) conference on June 29, 2020 and further consulted by email thereafter. The parties have consulted regarding the scope, nature, and duration of the discovery period necessary to resolve this matter, and are in substantial agreement as to the appropriate scope and timeline for discovery.

**PROPOSED DISCOVERY PLAN**

A. Rule 26(a) Disclosures: The parties report that no changes should be made in the timing, form, or requirements for disclosures under Federal Rule 26(a) made applicable herein by Bankruptcy Rule 7026. The parties exchanged initial disclosures on or before July 13, 2020.

B. The Subjects On Which Discovery May Be Needed: The parties agree that the subjects of discovery will relate to the claims and defenses asserted in this action, in accordance with the Federal Rules and Bankruptcy Rules. In particular, the parties anticipate discovery will be needed on at least the following subjects:

1. Debtor Jeffrey R. Wetter's (the "Debtor") transfer of the JBW Units<sup>1</sup> to the Debtor and Scott Sayre as tenants by the entirety, including whether that transfer was fraudulent under the Bankruptcy Code and Virginia law.
2. The timing and explanation for the Debtor's transfer of the JBW Units to the Debtor and Scott Sayre as tenants by the entirety
3. Debtor's financial condition at the times relevant to the Complaint.
4. Any other issue raised by the Complaint, the Debtor's Answer, or Sayre's Answer to the Complaint.

The parties anticipate that all discovery shall be concluded by November 20, 2020, and that all discovery requests shall be served with sufficient time that responses will be due on or before that date. In addition, the parties anticipate the subject areas identified above may require expert testimony. The parties have agreed that both of their initial expert disclosures under Federal Rule 26(a)(2)(B), which is made applicable herein by Bankruptcy Rule 7026, shall be due on or before

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<sup>1</sup> Unless otherwise defined herein, the capitalized terms shall have the same meaning ascribed to them in the Complaint, ECF No. 1.

October 1, 2020 and any rebuttal report filed by either party shall be due on or before November 2, 2020.

All expert disclosures and documents required to be served but not filed shall be served by fax or emailed in a .pdf file in addition to service by conventional means. All experts shall be made available for deposition during the period following service of their disclosures, and prior to the deadline for that period, or in the case of rebuttal disclosures, prior to the close of discovery.

C. Provisions of Electronic Discovery: The parties discussed preservation and discovery of electronically stored information and agreed the electronically stored information including metadata and deleted files shall be preserved and shall be produced electronically. To the extent any electronic files produced in discovery are not readily accessible by standard commercially available software, the parties shall cooperate in converting such files to useable form. Documents kept in paper form may be produced electronically in .pdf format.

D. Claim of Privilege or Protection: The Parties will adhere to the procedure set forth in Federal Rule 26(b)(5)(A) (made applicable herein by Bankruptcy Rule 7026) with respect to privileged information. The Parties further agree that, as provided by Federal Rule 26(b)(5)(B), the inadvertent production of documents or information that is privileged or protected shall not be deemed a waiver of any privilege or protection, provided that the producing party promptly requests the return of the same upon discovering the inadvertent production. In the event that either party inadvertently produces documents or materials subject to a claim of such privilege or protection, the producing party will identify the inadvertent disclosure and if the receiving party

will promptly return the materials. Each party will also produce a log of all documents withheld on the basis of attorney client privilege or other evidentiary privilege or doctrine.

E. Limitations on Discovery: No modification to the allowed number of interrogatories is necessary and the parties do not anticipate more than 10 depositions by plaintiff or defendant. Discovery may be conducted on all matters within the scope of Federal Rule 26 and Bankruptcy Rule 7026, and shall not be phased.

F. Other Matters: The parties have discussed all other items required to be discussed by Federal Rule 26(f) and Bankruptcy Rule 7026.

#### **OTHER ITEMS**

- A. Electronic Service. The parties agree that service of documents may be completed by e-mail to opposing counsel. To assure the sender that service has been completed, the recipient must confirm receipt of the document(s).
- B. Preservation of Discoverable Materials: The parties have confirmed that they are taking all reasonable steps necessary to preserve all discoverable material.

Dated: July 2, 2020

Respectfully submitted,

Steven L. Higgs,  
Chapter 7 Trustee for the Bankruptcy Estate  
of Jeffrey Bernhard Wetter

Debtor Jeffrey B. Wetter

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*Steven L. Higgs, Chapter 7 Trustee for the  
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